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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,718

09/21/2006

Dani Markbreit

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06/01/2009

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EXAMINER

FULTON, KRISTINA ROSE

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

06/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/593,718	Applicant(s) MARKBREIT ET AL.	
	Examiner KRISTINA R. FULTON	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This office action is in response to the remarks submitted 2/24/09. Claims 1-8 stand rejected below. Claims 9-14 are withdrawn from further consideration.

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.
2. Please note that some of the prior art listed in the specification is not included on the IDS and should be addressed to avoid a notice of non-responsive amendment.

Claim Objections

3. In view of applicant's description of key vs. key blank in the remarks filed 2/24/09 the objection of the previous office action is withdrawn.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3673

5. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Botteon (US 5724841).

6. Regarding claims 1 and 5, Botteon shows a key (blank) comprising a generally elongate shaft portion defining first and second generally flat oppositely directed side surfaces, joined by edge surfaces, at least one of said first and second side surfaces cuttable to form key cuts that define a key combination surface (see figure 2 below); characterized by at least one key combination element (12) movably disposed in the elongate shaft portion and adapted for touching a lock combination element (20) disposed in a cylinder lock plug, wherein said at least one key combination element has inherent energy for applying an urging force against the lock combination element (column 3, lines 28-29), and wherein said at least one key combination element comprises a resilient arm (12') disposed in a recess (see figure 2 below) formed in said elongate shaft portion and "capable of" resiliently protruding outwards from the recess beyond both of said first and second side surfaces.

7. Regarding claims 2 and 6, at least one key combination element (12) pivotable about a pivot axis (see pivot axis in figure 2 below) and movably disposed in the elongate shaft portion.

8. Regarding claims 3 and 7, the at least one key combination element comprises a plurality of interface surfaces for urging at least one lock combination element (see figure 2 below where 12 has a plurality of surfaces 15 that urge a lock combination element).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

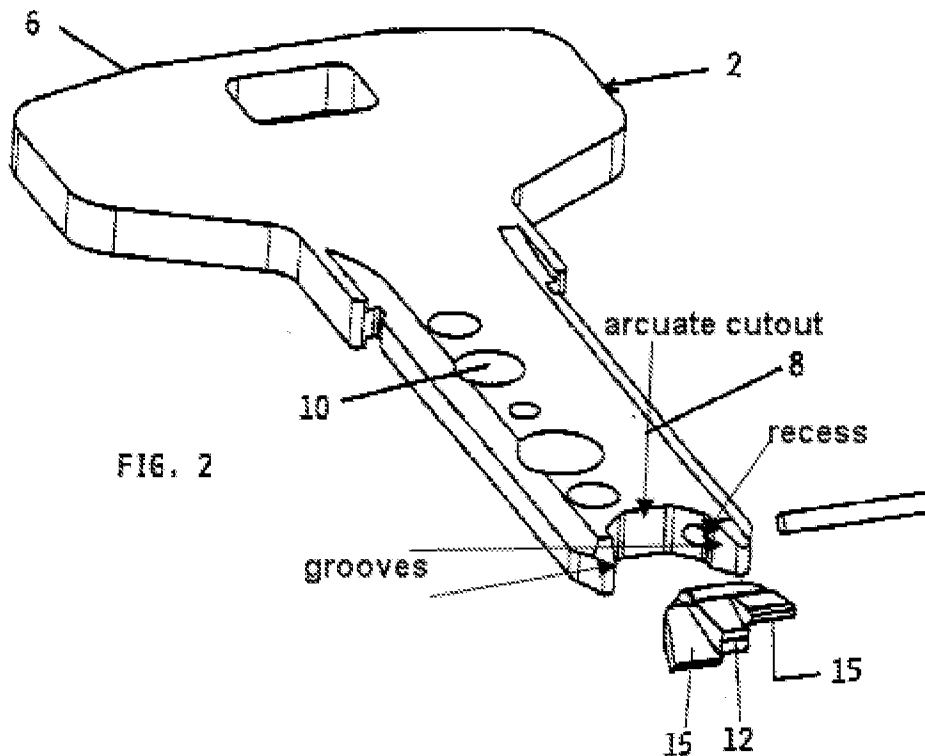
10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Botteon as applied to claims 1 and 5 above. Botteon teaches applicant's basic inventive concept including a key combination element (12) having a pair of arms (15) extending from a common base which is pivotally mounted in an arcuate cutout (top portion of recess) extending from said recess, and wherein said recess is formed with grooves (see illustration below) radially emanating from the arcuate cutout, wherein walls of said grooves define limits of angular motion of said resilient arms. Botteon shows the element 12 having a pair of arms 15 but fails to disclose if resilient element 12' includes a pair of arms as well. It would have been obvious to one of ordinary skill in the art to

Art Unit: 3673

include two resilient arms since Botteon discloses two arms (15) in a different embodiment. Including two arms provides a higher degree of security as stated in column 4, line 2. See the Botteon device below.



Response to Arguments

1. Applicant's arguments filed 2/24/09 have been fully considered but they are not persuasive. Applicant's sole argument that Botteon does not show a key combination element having an inherent energy (ie "springiness") the examiner respectfully disagrees. Botteon shows resilient element 12' (see rejection above where 12' is used in place of 12). Resilient element 12' is "springy" and therefor has an inherent energy.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTINA R. FULTON whose telephone number is (571)272-7376. The examiner can normally be reached on M-TH 7-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter M. Cuomo/
Supervisory Patent Examiner, Art Unit 3673

/K. R. F./
Examiner, Art Unit 3673
5/27/09